TPI, Inc.

EPA Notification of Preliminary Findings

June 2013

TPI, Inc. Response to EPA:

Applicable Code Citations and Discussion Points

History: On April 18, 2012 TPI, Inc. located in Newton, IA was inspected by a contracted representative for the Environmental Protection Agency (EPA). Mr. Clifford Nelles of ASE, Inc. was the inspector acting on behalf of EPA Region 7. Inspector Nelles identified thirteen items that were included as Notice of Violation and which resulted in two proposed Penalty Counts. TPI offers the following discussion points with the purpose of reducing the penalties proposed by EPA. It is important to note that no previous violations have been received by TPI and no EPA or Iowa-DNR fines have been received by TPI.

Response to Count 1: Failure to comply with the following manifesting and land disposal restriction requirements:

According to EPA, TPI failed to complete Item 13 of the Manifest with all hazardous waste codes required. TPI disputes this violation based on the following information. TPI has been in operation for five years. In those five years, TPI has changed solvents, manufacturing practices and hazardous waste disposal companies. Through each of those changes, the paint related waste underwent a new hazardous waste determination and, in some cases, the waste codes changed. These changes were appropriately noted on the manifests for the wastes shipped at those times.

The waste code was profiled based on generator knowledge which included a thorough evaluation of the solvent MSDS as well as an evaluation of operational practices as required in 40CFR262.11. Documentation of "generator knowledge" and/or actual analytical testing is not required under federal code which been supported in several EPA interpretations as included in Appendix B. For example, EPA stated in Faxback Document #11603 from RCRA Online that "Our regulations require generators of solid waste to determine whether their waste exhibits the TC or any other hazardous waste characteristic. This determination can be made either by testing the waste or by using knowledge of the waste to determine whether a characteristic is exhibited." Additionally, the same citation states "it is not federal regulation that is requiring actual testing of your waste" supporting that analytical evaluation is not a federal requirement.

Historically, the paint related waste generated by TPI has been coded D001, D035, F003 and F005 for both paint components and spent solvents that may be mixed with it. Based on generator knowledge, it was not coded D005 for barium. Based on changes in operational practices, the U002 waste code for acetone has been removed. After the site inspection conducted by Inspector Nelles, Ms. Deborah Bredehoft of EPA questioned if barium was present in the waste. Although documentation of a hazardous waste determination is not required and generator knowledge is an acceptable evaluation method, TPI could not produce documentation establishing that barium was not present in the waste at levels below the D005 listing. To err on the side of caution, after being questioned about the presence of barium, TPI submitted a sample of the waste for TCLP analysis for barium and added D005 to the waste profile in May 2012. This analysis (located in Appendix 1) indicates that TPI was accurate in its

initial assessment based on generator knowledge and barium is not present in the waste at levels warranting the inclusion of the D005 waste code. TPI will be removing this waste code from the profile.

An additional question was raised by EPA regarding the inclusion of the U002 waste code for unused acetone on prior manifests when waste was hauled by Safety-Kleen. In October, 2011, TPI switched its permitted TSDF from Safety-Kleen to WRR in Wisconsin. It had been Safety-Kleen's recommendation that the U002 code was included on the manifest and waste profile to address the rare occasion that unused acetone was included in the waste collection process. Concurrently, at this time, TPI switched solvents from primarily using acetone to using a solvent purchased from Barton Solvents. Based on this solvent change and changes that had occurred operationally, profiles were changed and the U002 code was not included because TPI had made the determination that all waste accumulated in the Satellite Accumulation Areas was used and should not be coded as a U002 waste.

Finally, with regard to the D035 waste code for MEK, TPI asserts that again based on generator knowledge resulting from review of MSDS and conversations with the solvent manufacturers (both Safety-Kleen and Barton Solvents), the solvents previously used did not require the inclusion of the D035 waste code. Based on questions received at the time of the inspection, however, TPI is again reviewing the need for the D035 waste code and has included it in the profile at this time. If analytical results determine that the inclusion of this waste code is not warranted, it will be removed.

TPI maintains that waste codes included on the manifests were accurately reflective of the waste generated and all waste has been categorized completely at each time paint related solvent waste was generated. As waste streams and operational practices changed, TPI completed new hazardous waste determinations and reflectively changed the waste codes. TPI did not fail to complete Item 13 on the manifests. **Based on these events, TPI requests that EPA eliminate Count 1 as a potential source of penalty.**

Response to Count 2: Operating as a TSDF without a permit by failing to comply with generator requirements:

According to EPA, during its inspection of the facility, Inspector Nelles identified one drum that was not labeled with the words "Hazardous Waste" and two drums that were not closed but had funnels for waste collection in them. These are documented in the Notice of Preliminary Findings in items 1, 3 and 6. TPI does not dispute these findings. Given that TPI is a registered Large Quantity Generator of hazardous waste, shipping more than 144,000 lbs of hazardous waste since January 2012 through May 2013, and has several satellite accumulation areas with more than 600 employees, these inadvertent errors on occasion do occur. TPI works diligently to train employees and monitor activities, minimize risk to employees and the environment, comply with all EPA requirements and continuously improve the safety and effectiveness of its operations. In the five years that TPI has been in operation and in the approximately three years that TPI has been a Large Quantity Generator, it has received no violations from any regulatory agencies and has continued to make good faith efforts to comply.

The facility that TPI operates has a large secondary containment system (30,000 gallons) under the primary working area of the plant in the event of chemical spill or fire. It has a fire suppression system

that is compliant with all local requirements and has had annual fire inspections with no penalties since it opened in 2008. Located throughout the plant are eyewash stations, safety showers, fire extinguishers, first aid stations and well marked egress routes in the event of an emergency. TPI also has facility evacuation route maps located on the walls throughout the facility. The site environmental and safety personnel work constantly to assure compliance with all regulatory requirements throughout each day. TPI has an active waste minimization program as evidenced by the implementation of only low-mercury fluorescent lamps which are recycled as well as a used oil recycling program which is now only recycled through a permitted facility.

TPI disputes the claim by EPA that is was "Operating as a TSDF without a permit by failing to comply with generator requirements." Facts which indicate that TPI makes every effort to comply with the rigorous requirements of a Large Quantity Generator as outlined in 40CFR262.34 , but does not operate as a TSDF include the following:

1. TPI does not treat hazardous waste. TPI does not dispose of hazardous waste as an end destination site. TPI has no waste treatment areas and no disposal areas. TPI does store hazardous waste it generates as a Large Quantity Generator for shipment to and management by a permitted TSDF facility. As evidenced by the manifests and shipment dates, TPI ships waste at least twice per calendar month and often weekly for management by WRR of Wisconsin which is a permitted EPA TSD facility. TPI is registered as a Large Quantity Generator in the EPA tracking databases and operates as such.

2. Inspector Nelles did not identify any drums which had been on site longer than 90-days. TPI is diligent about compliance with LQG status and assures that hazardous waste drums are shipped as frequently as possible to minimize risk to employees and the community. This is one of the core mechanisms TPI has implemented as part of its Contingency Planning. Of the more than eight satellite accumulation areas located throughout the 350,000sq ft plant and the more than 18 drums of hazardous waste generated each month, TPI makes every effort to assure that all drums are marked, labeled, closed and stored in compliance with EPA LQG requirements.

3. TPI has a single hazardous waste storage area (90-day storage area). The hazardous waste storage building is located on the exterior of the building (east end) and was shown to Inspector Nelles as indicated in photos 5-9 from his report. This storage area is a free standing Haz-Store building designed to contain hazardous chemicals and in compliance with EPA requirements. It is labeled as a hazardous waste storage area with appropriate emergency contact information and is secured with limited access. Based on the design of this building with its inherent secondary containment and fire resistant build which meets all flammable liquids storage requirements, TPI asserts that both spill control and fire suppression measures were in place at the time of the inspection. TPI acknowledges that additional spill control and fire suppression items were added to the 90-day hazardous waste storage area, but that the intent of the code was met by the location, design and specifications of the separate hazardous waste storage building and that Inspector Nelles' item 5 in the Notice of Preliminary Findings is not accurate.

4. All locations where hazardous waste is collected inside of the plant are satellite accumulation areas. All satellite accumulation areas contain drums that are located within 50 ft of the generation point and

are appropriately labeled as satellite accumulation drums. A single 55-gallon drum is located at each satellite collection station and frequently these drums are located in flammable storage cabinets to offer additional secondary containment and safety for employees in the plant. All drums are properly labeled, bonded, grounded and closed. Although Inspector Nelles questioned the location of one satellite accumulation area (near the paint booth, listed in Appendix 1-9 in the inspection report as column 36) and incorrectly identified it as a hazardous waste storage area, it is managed as a satellite accumulation area. It was at this location that Inspector Nelles issued violation #2 for a missing start accumulation date. This drum was located in the satellite accumulation area and, therefore, no start accumulation date is required. Additionally, the location meets the definition of a satellite accumulation area. It is correctly located within the control of the operator with no doorways, hallways or impediments to accessing the satellite accumulation drums and is near the point of generation (photos located in Appendix 3). This is consistent with the guidance that EPA has issued identified in Appendix 4, regarding the location of Satellite Accumulation Areas. Inspector Nelles also indicated in item #4 of the Notice of Preliminary Findings that the hazardous waste storage area was not being inspected weekly. This is inaccurate. As shown in Attachment 15 of the Inspection Report, the Hazardous Waste Storage Area log, which is located on the East exterior of the building, is accurate and complete. The waste storage area that Inspector Nelles is referring to is the same Satellite Accumulation Area he incorrectly identified as a 90-day hazardous waste storage area. This Satellite Accumulation Area is not required to be inspected on a weekly basis. Based on the language in 40CFR262.34 and in the guidance provided in RCRA online #14703 (Appendix 4), Satellite Accumulation Areas are not required to have a weekly inspection log.

5. In items 7-12 of the Notice of Preliminary Findings Inspector Nelles identified several deficiencies in the TPI contingency plan. At the time of the inspection, TPI was in the process of updating and improving the Contingency Plan. TPI agrees that the plan in place at the time of the inspection was not in compliance with all of the details of the Code as required for Large Quantity Generators, however it is important to note that within 17 days of the inspection, a compliant Contingency Plan was submitted to EPA by TPI. In documents sent to EPA on May 12, 2012, the updated contingency plan as well as documentation demonstrating that the Contingency Plan had been submitted to the local first responders (Appendix 5) was sent the EPA. In this, all deficiencies noted in the inspection report were corrected. The timeline between inspection (April 18) and compliance (May 12) is 17 business days. In addition to the updated, compliant contingency plan, TPI has continued to improve on its overall emergency response program including emphasizing emergency response procedures during initial training of employees, minimizing risk to employees and the environment through safer work practices, and through the use of a roster to identify all employees in the plant and a visitor log in the event that personnel need to be accounted for.

6. Item #13 of the Notice of Preliminary Findings indicates that Inspector Nelles determined that many training requirements are not adequately being addressed. TPI disputes this finding. All employees of TPI initially receive training that teaches them about the hazardous chemicals present in the plant. This training occurs prior to working in the warehouse. All employees receive training about emergency response procedures, what alarms sound like, how employees are to respond, where evacuation points

are and the location of a rally point. Employees are told who the emergency coordinator is. The emergency coordinator and the hazardous waste technician have received DOT and EPA training. The records documenting this training were submitted to EPA on May 12, 2012. These are the only two individuals are allowed access/entry into the hazardous waste storage area, are allowed to sign manifests or are allowed to collect satellite accumulation containers that are full and replace them with empty collection drums. TPI maintains that the training of these individuals as well as the training in place for general employees meets the criteria identified in the LQG code requirements.

Proposed adjustment to Penalty Computation Worksheet:

Based on the compilation of this evidence, the rapid response to achieve compliance to each item identified in the Notification of Preliminary Findings, the documented good faith efforts and the historical compliance that TPI has demonstrated, TPI asserts that a downward adjustment of the proposed penalty is warranted. After evaluation of the Penalty Computation Worksheet, TPI proposes the following adjustments:

1. EPA personnel have assigned the following values to items on the Gravity Based Matrix:

a. Potential for Harm: moderate. TPI proposes that this should be reduced to minor. The facility has numerous secondary containment measures in place, a compliant fire suppression system, spill control and decontamination stations throughout the plant, minimized on-site hazardous waste and a strong good faith effort to operate as a compliant Large Quantity Generator. Based on all of the safeguards in place at the plant as well as the efforts of personnel at the facility, TPI asserts that the Potential for Harm to the community, employees or the environment is highly unlikely and meets the definition of minor.

b. Extent of Deviation: moderate. TPI agrees with this assessment. Given the detailed requirements for Large Quantity Generator Contingency plans identified in the federal code TPI acknowledges that the Contingency Plan in place at the time of the inspection did not meet all of the detailed requirements for a Large Quantity Generator. TPI also acknowledges that at the time of the inspection, there were some drums inadvertently left open, undated or unlabeled but also asserts that these violations were corrected immediately. These meet the criteria of "moderate" deviations from code requirements.

c. Cell Position: 75%. TPI proposes that this should be reduced to 25%. Given that these violations were the first in the history of the facility, they did not result in any damage to employees or the environment and they were all rapidly corrected in a positive, good faith manner, TPI asserts that this reduction is warranted.

Based on these adjustments, TPI proposes that the penalty amount for Count 2 should be $1,062 instead of $10,270 as proposed by EPA.

2. EPA personnel have assigned the following values to items on the Multi-Day/Multiple Occurrence Component for Count 2:

a. Potential for Harm: moderate. TPI proposes that this should be reduced to minor. The facility rapidly responded to violations by correcting many of them at the time of the inspection and by correcting the remaining concerns within 17 days of the initial inspection. Based on the rapid response and the correlating safety measures in place at the time of the inspection, TPI asserts that the Potential for Harm to the community, employees or the environment is highly unlikely and meets the definition of minor.

b. Extent of Deviation: moderate. TPI agrees with this assessment.

c. Cell Position: 75% TPI proposes that this should be reduced to 25%. Given that these violations were the first in the history of the facility, they did not result in any damage to employees or the environment and they were all rapidly corrected in a positive, good faith manner, TPI asserts that this reduction is warranted.

Based on these adjustments, TPI proposes that the Multiday/Multiple Occurrence Component for Count 2 should be calculated for 17 days – 1 day (16 days) at 25% of the cell value ($213) for a total penalty amount of $3,410 instead of $38,775 as proposed by EPA.

This results in an initial penalty total of: $4,472 instead of the proposed $49,045. TPI also proposes a 15% reduction in overall penalty based on the good faith effort to comply with regulations that the company has demonstrated historically. **This results in a Total Penalty Amount of $3,800.**

In addition to paying this penalty amount, TPI proposes to undertake a Supplemental Environmental Project. TPI acknowledges that their processes currently generate a large amount of waste acetone each calendar month. It may be possible for TPI to implement the use of a solvent recycling system to recover this acetone and minimize the waste acetone quantity. TPI proposes to dedicate employee time and resources over a one year time frame to evaluate purchase of a solvent recycler and, if it meets the necessary quality control, production and financial limits, to implement a solvent recycling program through the purchase of a solvent recycling unit. TPI offers to issue progress reports quarterly regarding the research on the solvent recycling unit and estimates that the investment in the process as well as the purchase of a recycling unit, if warranted, is valued at approximately $38,500. This calculation is based on 10% employee time for a year (208 hours/year) at a rate of $35/hr for which equals $7,280, $1,220 for analytical analysis and purchase of a $30,000 solvent recycling unit.

In Summary:

- TPI disputes Count 1 of the Penalty Computation Worksheet and requests that EPA dismiss Count 1.
- As documented above, TPI disputes some of the inspector's findings from the April 18, 2012 site inspection which resulted in Count 2
- TPI propose a reduction in penalty from $51,008 to $3,800 for Count 2.
- TPI proposes to undertake a SEP to investigate implementation of a solvent recycling program.
- TPI estimates that the SEP could cost $38,500 if a solvent recycling system is implemented.

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